IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 203 OF 2006

CARMINA MASCARENHAS AND 4 ORS., ...Petitioners

Versus

PREMAVATI BABOL SAKHALKAR AND 2 ORS., ...Respondents

Mr. J. P. Mulgaonkar, Advocate for the Petitioners.
Mr. J.E. Coelho Pereira, Sr. Advocate with Mr. Somnath Karpe for the Respondents.

Coram:- SMT. RANJANA DESAI, J.

Date:- 21st June, 2006

P.C.:

In this Writ Petition the original defendants have challenged the order dated 20.01.06 passed by Civil Judge Senior Division, Mapusa in Special Civil Suit No.14/03/C. By the impugned order, the learned Judge has partly allowed the application filed by the plaintiffs under Order 14, Rule 5 of the Code of Civil Procedure. In the application the plaintiffs had prayed that Issue Nos.2, 3 and 4 be deleted. The said Issues read as follows :-

" 2. Whether the Plaintiffs prove that the defendant no.1 came to know about the wrong entry in the survey records of the defendants in the year October 2001 ?

3. Whether the defendants prove that the suit property is in continuous possession and enjoyment as tenants and deemed purchasers thereof through their Predecessors ?

4. Whether the defendants prove that Candida Mascarenhas was

residing as mundkar in the suit property ? "

2. By the impugned order, the learned Judge refused to delete Issue No.2. He modified Issue No.3 and so far as Issue No.4 is concerned, the learned Judge ordered its deletion. The petitioners are aggrieved by deletion of Issue No.4.

3. I have heard the learned counsel for the petitioners. He drew my attention to Section 2, sub-section (23) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as the said Act). He submitted that in the written statement the petitioners have stated that they are in exclusive possession and enjoyment as bonafide agricultural tenants and deemed purchasers of the suit property. He pointed out that again in paragraph 13 of the written statement the petitioners have stated that the defendants and their predecessors are in exclusive, continuous, open and peaceful possession, enjoyment and cultivation of the suit property without interruption for the past over eighty years. The learned counsel submitted that these averments were in fact in terms of Section 2(23) of the said Act and therefore the learned Judge erred in observing that the petitioners had not given necessary details in the written statement. He submitted that there was no warrant for deleting the said issue.

4. As against that, the learned counsel for the respondents submitted that no interference is necessary with the impugned order. The learned counsel relied on the judgments of this Court in Pandu Dhondi Yerudkar and another v. Ananda Krishna Patil (A.I.R. 1975 Bombay 52) and M/s. Siridao Estates Pvt. Ltd. v. Smt. Apolona Pires (2002 (2) Goa L.T. 81).

5. In Pandu Dhondi Yerudkar's case (supra) this Court was dealing with the provisions of Section 85-A of Bombay Tenancy and Agricultural Lands Act. While dealing with somewhat similar fact situation, this Court observed as under :-

" As frequently this question arises, a little caution is required to be exercised before the Court actully frames such an issue. Under Order 14 of the Code of Civil Procedure an issue can only arise when a material proposition of fact or law is affirmed by one party and denied by the other. When a vague plea is made by the defendant contending that he is a tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. If in spite of such particulars being asked for the defendant is unable to furnish the same, the Court should not raise an issue on a vague plea that he, the defendant, is a tenant of any particular piece of land. Normally the rules of pleadings require that these particulars are the minimum particulars which a man must furnish before he can request the Court to frame an issue as regards the claim made for tenancy. "

6. It is clear from the above observations of this Court that a vague plea as regards tenancy is not sufficient. A defendant who claims to be a tenant must necessarily give particulars as to the time when the tenancy was created, the person by whom it was created and the terms on which it was created. No details are found in the present written statement.

7. In M/s. Siridao Estates Pvt. v. Smt. Apolona Pires (supra) this Court was dealing with a case where the defendant claimed to be a mundkar. This Court referred to its judgment in Mitra Archdiocese of Goa and Daman v. Mr. K. Vijayadharan (1999 (2) Goa L.T. 97) where it was observed that a person claiming to be a Mundkar must disclose the facts relating to the consent of the bhatkar to reside in the dwelling house, the facts regarding his lawful residence in the house and the facts in relation to his fixed habitation in such a house. Inasmuch as in the case before it the defendant had not given the above details, the issue regarding mundkarship was struck off by this Court.

8. In my opinion, the above judgments are clearly applicable to the facts

of this case. In this case also the necessary particulars have not been given in the written statement. Hence the trial Court has rightly allowed the application. No interference is required with the impugned order. However, this shall not preclude the defendants from adopting such remedy as may be available to them in law regarding their claim of tenancy as well as mundkarship.

Writ Petition dismissed.

SMT. RANJANA DESAI, J.

sl.